

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

In re: Petition of City of Waltham)	D.T.E. 02-11
)	

INITIAL BRIEF OF BOSTON EDISON COMPANY

I. INTRODUCTION

On January 24, 2002, the City of Waltham (“Waltham”) filed a petition (the “Petition”) with the Department of Telecommunications and Energy (the “Department”) regarding the purchase of streetlights sold to Waltham by Boston Edison Company d/b/a NSTAR Electric (“Boston Edison” or the “Company”) (Exh. W-1). In its Petition, Waltham requests that the Department direct the Company to recalculate the purchase price of such streetlights, citing the Department’s jurisdiction to resolve any matter arising in connection with the exercise of a municipality’s option to convert streetlights pursuant to G.L. c. 164, § 34A(d) (*id.* at ¶¶ 2, 15).¹

On February 15, 2002, the Hearing Officer established procedures for filing additional information regarding the Petition. On February 20, 2002, Waltham filed a “Response to Information Request” with the Department that included argument by Waltham’s counsel, but did not include information regarding Waltham’s Petition supported by expert testimony. On February 22, 2002, the Company filed an answer (the

¹ The Purchase and Sale Agreement (Exhibit W-3) signed by Waltham and the Company includes an Appendix C, which allows Waltham to contest the purchase price of the streetlights sold to Waltham after the closing of the sale “in the event the [Department] determines that the purchase price offered by the [C]ompany, and paid by [Waltham], in an amount of \$674,159.42, unfairly overstates the purchase price by making an inequitable allocation between the municipal and private streetlights.” The sale of streetlights to Waltham closed on December 31, 2001 and Waltham filed its Petition on January 24, 2002.

“Answer”) to Waltham’s Petition. On February 28, 2002, Waltham filed a response to the Company’s Answer. On March 1, 2002, the Company filed the pre-filed testimony of Bryant K. Robinson, Manager of Revenue Requirements for the regulated operating companies of NSTAR. The Department held an evidentiary hearing on April 11, 2002. Waltham filed three exhibits with the Department. The Company has filed 17 exhibits, including 16 responses to information requests issued by the Department.

Waltham presented one witness, Leo Landry, Wiring Inspector for the City of Waltham. Mr. Landry testified as to his understanding of the basis of Waltham’s dissatisfaction with the purchase price of the streetlights. The Company also presented one witness, Bryant K. Robinson, referenced above. Mr. Robinson testified regarding the Company’s methodology for determining the price of streetlights sold to Waltham, including the Company’s methodology of allocating the Company’s gross investment and accumulated depreciation for various categories of streetlight plant to the Company’s municipal and commercial streetlight accounts for purposes of sale. As set forth below, the Company has demonstrated that: (1) its methodology for determining the price of streetlights sold to Waltham is consistent with the requirements of G.L. c. 164, § 34A; and (2) Waltham has failed to support its Petition with evidence of any kind. Accordingly, the Department should deny Waltham’s Petition.²

² On April 11, 2002, the Company moved to dismiss (the “Motion”) this proceeding citing as grounds Waltham’s failure to support its Petition with evidence. The Department noted in a Hearing Officer Memorandum issued on May 2, 2002 that it would rule on the Company’s Motion in its Order regarding this dispute.

II. STANDARD OF REVIEW

As part of the Electric Restructuring Act of 1997 (the “Act”), the Legislature authorized municipalities to purchase streetlights owned by an electric company, and delineated requirements for compensation of such streetlights, as follows:

Any municipality exercising the option to convert its street lighting service pursuant to subsection (a) shall be required to compensate the electric company for its unamortized investment, net of any salvage value obtained by the electric company under the circumstances, in the lighting equipment owned by the electric company in the municipality as of the date the electric company receives notice of such exercise pursuant to subsection (a). In meeting this requirement, the municipality may acquire all or any part of such lighting equipment of the electric company upon the payment of the unamortized investment allocable to such acquired equipment.

Chapter 164, Acts of 1997, § 196 (codified at G.L. c. 164, § 34A(b)).

In a recent proceeding involving the sale of streetlights to municipalities, the parties to that proceeding agreed that the term “unamortized investment” in G.L. c. 164, § 34A is the book value for gross plant in service, net of accumulated depreciation. Petition of the Towns of Lexington and Acton, D.T.E. 98-89, at 3 (1998). Accordingly, the Department has recognized that the proper means to determine the “unamortized investment” of an electric company in its streetlight plant is to determine how much such plant has been depreciated and subtract that amount from the Company’s original book value for such plant in service. Section 34A also notes that a municipality’s acquisition of an electric company’s streetlights can result only “upon the payment of the unamortized investment allocable to such acquired equipment.” G.L. c. 164, § 34A(b). Therefore, in order to implement Section 34A properly, a methodology must be used that not only calculates the accumulated depreciation associated with the Company’s streetlights, but also allocates such accumulated depreciation to the lights subject to sale.

III. THE COMPANY'S ALLOCATION METHODOLOGY PROPERLY ALLOCATES ITS GROSS INVESTMENT AND ACCUMULATED DEPRECIATION ASSOCIATED WITH ITS STREETLIGHT INVESTMENT IN WALTHAM FOR PURPOSES OF PRICING WALTHAM'S MUNICIPAL STREETLIGHTS

A. The Company's Gross Investment and Accumulated Depreciation Associated with its Common Streetlight Plant Must Be Allocated to the Company's Municipal and Commercial Plant Accounts to Determine a Total Price for the Municipal Streetlights in Waltham

Waltham's streetlight plant includes several different categories of streetlighting facilities: (1) poles; (2) fixtures; (3) luminaires; (4) overhead and underground conductors; (5) underground conduit; and (6) transformers and control equipment (see Exh. BEC-BKR at 4). The Company has purchased these items at various times since the original installation of streetlights in Waltham and depreciated them over time. The Company has also retired some of this plant due to damage or ordinary wear. Accordingly, the Company's investment in Waltham's streetlights is accounted for through two components: (1) gross investment; and (2) accumulated depreciation (see id. at 3-4). The Company's original cost for the streetlighting plant is reflected in the Company's gross investment and the plant's value over time is reflected in the amount of accumulated depreciation applied against the original costs of the plant. In order to determine the Company's unamortized investment in Waltham's streetlight plant, the accumulated depreciation associated with Waltham's streetlight plant must be subtracted from the Company's gross investment in such equipment.

The Company accounts for its gross investment and accumulated depreciation in Waltham's streetlights through separate streetlight accounts, based on the type of streetlight plant (Exh. BEC-BKR at 3). Most of the costs associated with the property sold to Waltham are booked to account 635, which includes municipal streetlighting

posts, fixtures and luminaires (id.). Account 636 includes the Company's commercial streetlighting posts, fixtures and luminaires (id.). However, accounts 632, 633, 634 and 637 (the "Common Plant Accounts"), which include gross investment and depreciation relating to overhead conductors, underground conduit, underground conductors and transformers/control equipment, respectively, relate both to municipal streetlighting plant and to commercial streetlighting plant (id.).³ Because the gross investment and accumulated depreciation in accounts 632, 633, 634 and 637 are associated with streetlight plant common to both municipal and commercial streetlighting equipment booked to accounts 635 and 636, a portion of the original investment and accumulated depreciation booked to the Common Plant Accounts must be allocated to the municipal plant purchased by Waltham in order to determine the Company's unamortized investment in such streetlights.

As noted by Mr. Robinson in his testimony, in order to allocate the costs and depreciation in Waltham's Common Plant Accounts to the municipal and commercial accounts, the Company first identified the gross investment and accumulated depreciation accounted for in plant accounts 635 (municipal) and 636 (commercial) (Exh. BEC-BKR at 5). The Company next allocated its gross investment and accumulated depreciation in accounts 632, 633, 634 and 637 and the CCNC to determine the total costs attributable to municipal streetlighting equipment (id.). To accomplish this allocation, the Company first took the gross investment in the CCNC account and allocated it to accounts 632 through 637, based on the proportion of the gross investment of each account to the total

³ In addition, the Company accounts for gross investment and accumulated depreciation for streetlighting plant that has not yet been categorized for accounting purposes in a separate account designated "Completed Construction Not Classified or CCNC" (id. at 4).

gross investment of all the accounts (id.). The Company then took the accumulated depreciation in the CCNC account and allocated it to accounts 632 through 637, based on the proportion of accumulated depreciation in each account to the total accumulated depreciation of all the accounts (together with the CCNC gross investment allocation, “Step 1”) (id.).

The Company next allocated the gross investment in accounts 632, 633, 634 and 637 to the municipal and commercial accounts, based on the proportion of gross investment (finished plant plus CCNC) in the municipal and commercial accounts to the total gross investment in those accounts after Step 1 (Exh. BEC-BKR at 5). Accumulated depreciation in accounts 632, 633, 634 and 637 was similarly allocated to the municipal and commercial accounts, based on the proportion of accumulated depreciation in the municipal and commercial accounts to the total accumulated depreciation in those accounts after Step 1 (together, with the allocation of gross investment of accounts 632, 633, 634 and 637, “Step 2”) (id.). At the conclusion of Step 2, the proportion of gross investment in accounts 635 and 636 was approximately 80 percent municipal and 20 percent commercial. Therefore, the Company allocated its gross investment in the Common Plant Accounts to accounts 635 and 636 based on the same 80/20 ratio. In addition, in Step 2, the proportion of accumulated depreciation in accounts 635 and 636 was approximately 60 percent municipal and 40 percent commercial. Accordingly, the Company allocated its accumulated depreciation in the Common Plant Accounts to accounts 635 and 636 based on a 60/40 ratio.

Lastly, Waltham purchased approximately 80 streetlights (out of 742) that served municipal purposes, although they were accounted for by the Company in account 636 (Exh. BEC-BKR at 6). Therefore, the Company added to account 635

approximately 11 percent of the total gross investment and depreciation in account 636 (80/742), representing the approximate percentage of streetlights purchased by Waltham that were otherwise accounted for in account 636 (id.).

B. The Company's Allocation Methodology Is Appropriate and Fair Because It Is Based on Principles of Cost Causation and Accurately Reflects the Vintages of Streetlights Sold to Waltham

The Company's allocation methodology is based on principles of cost causation and thus, is an appropriate and fair allocation methodology for the Common Plant Accounts. As noted by Mr. Robinson, the costs that are booked as the Company's gross investment for streetlighting plant are caused by gross-investment related streetlighting costs, i.e., the original cost of the plant (Tr. at 37). Accordingly, in order to allocate costs in the Common Plant Accounts to account 635 and 636, the Company allocated the gross investment in the Common Plant Accounts to accounts 635 and 636 based on the ratio of gross investment in accounts 635 and 636 (80/20), i.e., an allocation of gross investment based on gross investment (see Exh. BEC-BKR at 7). Similarly, the amount of accumulated depreciation in the Common Plant Accounts is caused, in part, by the age or vintage of the property booked to such accounts, as influenced by the retirement of some of the property in such accounts (id.). Accordingly, the accumulated depreciation in the Common Plant Accounts should be (and was) allocated to the accumulated depreciation in accounts 635 and 636 based on the ratio of accumulated depreciation in accounts 635 and 636 (60/40), i.e., an allocation of accumulated depreciation based on accumulated depreciation. This methodology appropriately captures the vintage of plant in the Common Plant Accounts for purposes of properly valuing the municipal and commercial streetlights for sale (id. at 9; Exh. DTE-1-9).

Waltham's fundamental allegation regarding the Company's allocation methodology appears to be that the Company has allocated an excessive amount of accumulated depreciation to account 636 (Exh. W-1, at ¶ 14). However, the ratio of accumulated depreciation between accounts 635 and 636 (approximately 60/40) is evidence of the fact that the commercial streetlighting equipment in Waltham, including its ancillary equipment, is generally older than the municipal streetlighting equipment in Waltham (Exh. DTE-2-5; Tr. at 75).⁴ Accordingly, because the Company's accumulated depreciation for poles, fixtures and luminaires booked to account 636 is approximately 40 percent of all of the Company's accumulated depreciation for this commercial equipment in Waltham, allocating approximately 40 percent of the Company's accumulated depreciation in the Common Plant Accounts to account 636 is fair and equitable. It is neither excessive nor insufficient; it is based on the Company's actual accumulated depreciation booked to Waltham's streetlighting accounts. Accordingly, the Department should reject Waltham's petition and unsupported allegations and approve the Company's allocation methodology.

⁴ Department staff understands this point, as evidenced by the following colloquy at the evidentiary hearing:

MR. PASSAGIO: ...My interpretation of the company's position is that, stated simply, commercial streetlighting is much older than municipal streetlighting. Therefore, the plant used to support commercial streetlighting must be much older than the plant used to support municipal streetlighting. Therefore, when I allocate accumulated depreciation, I must allocate more to commercial than I do to municipal? Is that a fair characterization?

THE WITNESS: Yes, it is.

Tr. 1, at 70-71.

IV. WALTHAM HAS FAILED TO SUPPORT ITS PETITION WITH SUFFICIENT EVIDENCE TO JUSTIFY A PRICE FOR WALTHAM'S STREETLIGHTS DIFFERENT FROM THAT COMPUTED BY THE COMPANY

A. Waltham Has Not Offered an Alternative Allocation Methodology for Consideration by the Department Through an Expert Witness

Waltham's Petition questions the fairness of the Company's methodology for pricing Waltham's streetlights for sale, specifically citing the Company's allocation methodology for the "Common Plant Accounts". Waltham alleges that the Company improperly allocated a "negative \$72,470.17 to the net investment in account 636 in step 2 of the Company's purchase price calculation...[which] represents 244% of the negative \$29,655.29 net investment available for allocation in step 2" (Exh. W-1, ¶ 14). However, other than making this bare allegation, Waltham has utterly failed to support its position. Waltham's witness supporting its Petition and other exhibits (Exhibit W-2, NSTAR's Purchase Price Calculation and Exhibit W-3, the Purchase and Sale Agreement between the Company and Waltham) admitted that he has no experience in accounting, utility ratemaking, utility property valuation or utility allocation methodologies (Tr. at 8, 11, 20, 21). In addition, he admitted that his only understanding of Waltham's allegation was based on what others had told him (*id.* at 22). Waltham has offered no alternative allocation methodology through a witness, nor has it undercut the Company's evidence regarding the propriety of its allocation methodology. For these reasons alone, the Department should dismiss Waltham's Petition and find in favor of the Company (*see* Tr. at 26; Company Response to Waltham's Reply to Company's Motion to Dismiss (April 23, 2002)).

However, even if the Department does not dismiss Waltham's Petition, its allegation regarding the Company's allocation methodology is based on a fundamental

misunderstanding of the methodology. Contrary to the assertions of Waltham, the Company did not “allocate a negative \$72,470.17 to the net investment in account 636” (Exh. DTE 1-3; Tr. at 38). Indeed, as demonstrated through responses to numerous information requests and the testimony of an expert witness, the Company did not and should not allocate its gross investment and accumulated depreciation associated with Waltham’s streetlights based on the net investment in the streetlighting accounts.

As noted in response to an information request by the Department, an allocation of gross investment and accumulated depreciation in the Common Plant Accounts based upon net plant investment would fail to recognize the vintages of the investments made to serve accounts 635 and 636 because the vintage of the Company’s investments in ancillary streetlighting equipment booked to accounts 632, 633, 634 and 637, evidenced by the amount of depreciation in these accounts, would not be captured in full if the Company allocated its costs in those accounts using a net investment methodology (Exh. DTE-1-9). Moreover, a net investment allocation methodology would result in cross-subsidization (Exh. DTE-1-4). Cross-subsidization would occur using a net investment allocation methodology because the Company is entitled to recover from its customers generally (and its municipal customers specifically) its costs for streetlight plant (id.). As municipalities purchase streetlights in their communities pursuant to G.L. c. 164, § 34A, the Company’s costs for those streetlights must be reflected as accurately as possible in the price of the streetlights to be sold because, as each successive municipality decides to purchase streetlights in its community, any costs not recovered by the Company from the communities that purchase the Company’s streetlights must be borne by the Company’s remaining customers (id.). Therefore, allocating the Company’s gross investment and accumulated depreciation in the Common Plant Accounts based on a net investment

allocation methodology is not only inconsistent with principles of cost causation, as noted previously, but would result in Waltham purchasing streetlights at less than the Company's unamortized investment in such streetlights, a result inconsistent with the provisions of G.L. c. 164, § 34A. Accordingly, the Department should reject Waltham's attempt to renegotiate the purchase price of its streetlights through Department action for two reasons: (1) Waltham has failed to provide the Department with any evidence to support its contention that an alternative allocation methodology is more equitable than the Company's methodology; and (2) the Company's allocation methodology results in a fair and equitable price for Waltham's streetlights, consistent with principles of cost causation and the avoidance of cross-subsidization.

B. The Department Should Deny Waltham's Request to Include Late-Filed Documents in the Record of This Proceeding

On April 19, 2002, over a week after the close of the Department's evidentiary hearing in this proceeding, counsel for Waltham filed, without leave, a letter with the Department accompanied by two documents (the "Documents") that Waltham's counsel claimed would "shed light on a critical issue in dispute in this case" (Waltham April 19 Letter at 1). The Company responded to Waltham counsel's April 19 Letter with an Opposition filed on April 29, 2002 (the "Opposition"), which was accompanied by an Affidavit of Bryant K. Robinson (the "Robinson Affidavit") refuting the claims of Waltham's counsel. In a Hearing Officer Memorandum issued on May 2, 2002, the Hearing Officer stated that the Department would rule on both the April 19 Letter and the Company's Motion to Dismiss in its Order regarding this dispute (Hearing Officer Memorandum at 1 (May 2, 2002)).

The Department should deny Waltham's request to include the late-filed Documents in the record in this proceeding because Waltham: (1) failed to follow Department procedure found in 220 C.M.R. 1.11(7) regarding the filing of late-filed documents; (2) failed to authenticate the Documents; and (3) has not demonstrated good cause why the Documents should be included in the record of this proceeding. The Company will not repeat in detail its opposition to Waltham's April 19 Letter in this Brief and, instead, refers the Department to its Opposition and the Robinson Affidavit for its argument in support of its position. However, to the extent that the Department is considering granting Waltham's request in the same Order that rules on the merits of Waltham's Petition, the Company objects to including the Documents in the record of this proceeding without being granted the right to issue discovery regarding the Documents or cross-examine an expert witness regarding the Documents, to the extent that Waltham can authenticate them.

In the alternative, the Company requests that the Department give no weight to Waltham's counsel's characterizations of the Documents, or the Documents generally, because Waltham has failed to establish the proper foundation, or demonstrate good cause, for introducing the Documents into the record of this proceeding. Moreover, as noted in the Robinson Affidavit, the characterizations of the Documents by Waltham's counsel are specious and, accordingly, the Department should not make any conclusions regarding the substance of the Documents as they relate to the Company's testimony.

V. CONCLUSION

The Department should deny the relief requested by Waltham in its Petition because Waltham has failed to establish that the Company's methodology for pricing Waltham's streetlights was inconsistent with the requirements of G.L. c. 164, § 34A.

That statute requires municipalities that purchase streetlights from an electric company to compensate such electric company for its unamortized investment in the streetlights being purchased. The Company has demonstrated through expert testimony and supporting documentation that its allocation methodology properly allocates its gross investment and accumulated depreciation associated with its streetlight investment in Waltham for purposes of determining its unamortized investment in Waltham's streetlights and pricing such streetlights for sale. Conversely, Waltham has failed to support its allegations regarding the Company's methodology with evidence of any kind nor has Waltham offered an alternative methodology for consideration by the Department that is supported by expert testimony. Moreover, the Department should reject Waltham's attempt to include late-filed Documents in the record of this proceeding without establishing proper foundation for the Documents or demonstrating good cause for their inclusion in the record.

WHEREFORE, Boston Edison requests that the Department either:

1. Dismiss Waltham's Petition for failure to state a claim upon which relief may be granted; or, in the alternative
2. Deny the relief requested by the Petitioner; and
3. Grant such other relief as the Department deems necessary and appropriate.

Respectfully submitted,

**BOSTON EDISON COMPANY
D/B/A NSTAR ELECTRIC**

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